

REFERENCE TITLE: child support; court orders

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2292

Introduced by
Representatives Hershberger, Alvarez, Senators Brotherton: Waring

AN ACT

AMENDING SECTIONS 25-503 AND 25-510, ARIZONA REVISED STATUTES; RELATING TO
CHILD SUPPORT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-503, Arizona Revised Statutes, is amended to
3 read:

4 25-503. Order for support; methods of payment; modification;
5 termination; statute of limitations; judgment on
6 arrearages; notice; security

7 A. In any proceeding in which there is at issue the support of a
8 child, the court may order either or both parents to pay any amount necessary
9 for the support of the child. IF THE COURT ORDER DOES NOT SPECIFY THE DATE
10 WHEN CURRENT SUPPORT BEGINS, THE SUPPORT OBLIGATION BEGINS TO ACCRUE ON THE
11 FIRST DAY OF THE MONTH FOLLOWING THE ENTRY OF THE ORDER. If a personal check
12 for support payments and handling fees is rightfully dishonored by the payor
13 bank or other drawee, any subsequent support payments and handling fees shall
14 be paid only by cash, money order, cashier's check, traveler's check or
15 certified check. The department may collect from the drawer of a dishonored
16 check or draft an amount allowed pursuant to section 44-6852. Pursuant to
17 sections 35-146 and 35-147, the department shall deposit monies collected
18 pursuant to this subsection in a child support enforcement administration
19 fund. If a party required to pay support other than by personal check
20 demonstrates full and timely payment for twenty-four consecutive months, that
21 party may pay support by personal check if these payments are for the full
22 amount, are timely tendered and are not rightfully dishonored by the payor
23 bank or other drawee. On a showing of good cause, the court may order that
24 the party or parties required to pay support give reasonable security for
25 these payments. If the court sets an appearance bond and the obligor fails
26 to appear, the bond is forfeited and credited against any support owed by the
27 party required to pay support. This subsection does not apply to payments
28 that are made by means of a wage assignment.

29 B. On a showing that an income withholding order has been ineffective
30 to secure the timely payment of support and that an amount equal to six
31 months of current support has accrued, the court shall require the obligor to
32 give security, post bond or give some other guarantee to secure overdue
33 support.

34 C. In title IV-D cases, and in all other cases subject to an income
35 withholding order issued on or after January 1, 1994, after notice to the
36 party entitled to receive support, the department or its agent may direct the
37 party obligated to pay support or other payor to make payment to the support
38 payment clearinghouse. The department or its agent shall provide notice by
39 first class mail.

40 D. The obligation for current child support shall be fully met before
41 any payments under an order of assignment may be applied to the payment of
42 arrearages. If a party is obligated to pay support for more than one family
43 and the amount available is not sufficient to meet the total combined current
44 support obligation, any monies shall be allocated to each family as follows:

1 1. The amount of current support ordered in each case shall be added
2 to obtain the total support obligation.

3 2. The ordered amount in each case shall be divided by the total
4 support obligation to obtain a percentage of the total amount due.

5 3. The amount available from the obligor's income shall be multiplied
6 by the percentage under paragraph 2 of this subsection to obtain the amount
7 to be allocated to each family.

8 E. Any order for child support may be modified or terminated on a
9 showing of changed circumstance that is substantial and continuing, except as
10 to any amount that may have accrued as an arrearage before the date of notice
11 of the motion or order to show cause to modify or terminate. The addition of
12 health insurance coverage as defined in section 25-531 or a change in the
13 availability of health insurance coverage may constitute a continuing and
14 substantial change in circumstance. Modification and termination are
15 effective on the first day of the month following notice of the petition for
16 modification or termination unless the court, for good cause shown, orders
17 the change to become effective at a different date but not earlier than the
18 date of filing the petition for modification or termination. The order of
19 modification or termination may include an award of attorney fees and court
20 costs to the prevailing party.

21 F. Notwithstanding subsection E of this section, in a title IV-D case
22 a party, or the department or its agent if there is an assignment of rights
23 under section 46-407, may request every three years that an order for child
24 support be reviewed and, if appropriate, adjusted. The request may be made
25 without a specific showing of a changed circumstance that is substantial and
26 continuing. The department or its agent shall conduct the review in
27 accordance with the child support guidelines of this state. If appropriate,
28 the department shall file a petition in the superior court to adjust the
29 support amount. Every three years the department or its agent shall notify
30 the parties of their right to request a review of the order for support. The
31 department or its agent shall notify the parties by first class mail at their
32 last known address or by including the notice in an order.

33 G. If a party in a title IV-D case requests a review and adjustment
34 sooner than three years, the party shall demonstrate a changed circumstance
35 that is substantial and continuing.

36 H. The right of a party entitled to receive support or the department
37 to receive child support payments as provided in the court order vests as
38 each installment falls due. Each vested child support installment is
39 enforceable as a final judgment by operation of law. Unless it is reduced to
40 a written money judgment, an unpaid child support judgment that became a
41 judgment by operation of law expires three years after the emancipation of
42 the last remaining unemancipated child who was included in the court
43 order. Beginning on January 1, 2000, child support orders, including
44 modified orders, must notify the parties of this expiration date. The filing
45 of a request for a written money judgment before the end of that period

1 preserves the right to judgment until the court grants a judgment or the
2 court denies the request. A request does not need to be filed within three
3 years if:

4 1. The court later determines that the actions or conduct of an
5 obligor impeded the establishment of a written money judgment, including
6 avoiding service or notice of that action, changing a name or social security
7 number or leaving the state where the last support order was entered without
8 notifying the party to whom support is ordered to be paid or the court or the
9 department of that party's residential and mailing addresses.

10 2. The court later finds that the obligor threatened, defrauded or
11 wrongfully coerced the obligee into not filing a request to reduce any
12 support arrearages to a written money judgment.

13 I. The department or its agent or a party entitled to receive support
14 may file a request for judgment for support arrearages not later than three
15 years after the emancipation of all of the children who were the subject of
16 the court order. In such a proceeding there is no bar to establishing a
17 money judgment for all of the unpaid child support arrearages for all of the
18 children who were the subject of the court order. Notwithstanding any other
19 law, formal written judgments for support and for associated costs and
20 attorney fees are exempt from renewal and are enforceable until paid in
21 full. If emancipation is disputed, this subsection shall be liberally
22 construed to effect its intention of diminishing the limitation on the
23 collection of child support arrearages.

24 J. If a party entitled to receive child support or spousal maintenance
25 or the department or its agent enforcing an order of support has not received
26 court ordered payments, the party entitled to receive support or spousal
27 maintenance or the department or its agent may file with the clerk of the
28 superior court a request for judgment of arrearages and an affidavit
29 indicating the name of the party obligated to pay support and the amount of
30 the arrearages. The request must include notice of the requirements of this
31 section and the right to request a hearing within twenty days after service
32 in this state or within thirty days after service outside this state. The
33 request, affidavit and notice must be served pursuant to the Arizona rules of
34 civil procedure on all parties including the department or its agents in
35 title IV-D cases. In a title IV-D case, the department or its agent may
36 serve all parties by certified mail, return receipt requested. Within twenty
37 days after service in this state or within thirty days after service outside
38 this state, a party may file a request for a hearing if the arrearage amount
39 or the identity of the person is in dispute. If a hearing is not requested
40 within the time provided, or if the court finds that the objection is
41 unfounded, the court must review the affidavit and grant an appropriate
42 judgment against the party obligated to pay support.

1 K. If after reasonable efforts to locate the obligee the clerk or
2 support payment clearinghouse is unable to deliver payments for a period of
3 one hundred twenty days after the date the first payment is returned as
4 undeliverable due to the failure of a party to whom the support has been
5 ordered to be paid to notify the clerk or support payment clearinghouse of a
6 change in address, the clerk or support payment clearinghouse shall return
7 that and all other unassigned payments to the obligor unless there is an
8 agreement of the obligor to pay assigned arrears and other debts owed to the
9 state.

10 L. If the obligee of a child support order marries the obligor of the
11 child support order, that order automatically terminates on the last day of
12 the month in which the marriage takes place and arrearages do not accrue
13 after that date. However, the obligee or the state may collect child support
14 arrearages that accrued before that date. The obligee, the obligor or the
15 department or its agent in a title IV-D case may file a request or
16 stipulation to terminate or adjust any existing order of assignment, pursuant
17 to section 25-504 or section 25-505.01.

18 M. For the purposes of subsections H and I of this section, a child is
19 emancipated:

- 20 1. On the date of the child's marriage.
- 21 2. On the child's eighteenth birthday.
- 22 3. When the child is adopted.
- 23 4. When the child dies.
- 24 5. On the termination of the support obligation if support is extended
25 beyond the age of majority pursuant to section 25-501, subsection A or
26 section 25-320, subsections E and F.

27 Sec. 2. Section 25-510, Arizona Revised Statutes, is amended to read:

28 25-510. Receiving and disbursing support and maintenance
29 monies; arrearages; interest

30 A. The support payment clearinghouse established pursuant to section
31 46-441 shall receive and disburse all monies, including fees and costs,
32 applicable to support and maintenance unless the court has ordered that
33 support or maintenance be paid directly to the party entitled to receive the
34 support or maintenance. Within two business days the clerk of the superior
35 court shall transmit to the support payment clearinghouse any maintenance and
36 support payments received by the clerk. Monies received by the support
37 payment clearinghouse in cases not enforced by the state pursuant to title
38 IV-D of the social security act shall be distributed in the following
39 priority:

- 40 1. Current child support or current court ordered payments for the
41 support of a family when combined with the child support obligation.
- 42 2. Current spousal maintenance.
- 43 3. The current monthly fee prescribed in subsection D of this section
44 to cover the cost of handling support or spousal maintenance payments.

1 4. Past due support reduced to judgment and then to associated
2 interest.

3 5. Past due spousal maintenance reduced to judgment and then to
4 associated interest.

5 6. Past due support not reduced to judgment and then to associated
6 interest.

7 7. Past due spousal maintenance not reduced to judgment and then to
8 associated interest.

9 8. Past due amounts of the fee prescribed in subsection D of this
10 section to cover the cost of handling support or spousal maintenance
11 payments.

12 B. In any proceeding under this chapter regarding a duty of support,
13 the records of payments maintained by the clerk or the support payment
14 clearinghouse are prima facie evidence of all payments made and disbursed to
15 the person or agency to whom the support payment is to be made and are
16 rebuttable only by a specific evidentiary showing to the contrary.

17 C. At no cost to the clerk of the superior court, the department shall
18 provide electronic access to all records of payments maintained by the
19 support payment clearinghouse, and the clerk shall use this information to
20 provide payment histories to all litigants, attorneys and interested persons
21 and the court. For all non-title IV-D support cases, the clerk shall load
22 new orders, modify order amounts, respond to payment inquiries, research
23 payment related issues, release payments pursuant to orders of the court and
24 update demographic and new employer information. The clerk shall forward
25 orders of assignment to employers for non-title IV-D support orders. Within
26 five business days the clerk shall provide to the department any new address,
27 order of assignment or employment information the clerk receives regarding
28 any support order. The information shall be provided as prescribed by the
29 department of economic security in consultation with the administrative
30 office of the courts.

31 D. The support payment clearinghouse shall receive a monthly fee of
32 two dollars twenty-five cents to cover the cost of handling support and
33 maintenance payments. The court shall order payment of the handling fee as
34 part of the order for support or maintenance. The handling fee shall not be
35 deducted from the support or maintenance portion of the payment.

36 E. IN CALCULATING SUPPORT ARREARAGES NOT REDUCED TO A FINAL WRITTEN
37 MONEY JUDGMENT, INTEREST ACCRUES AT THE ANNUAL RATE OF TEN PER CENT BEGINNING
38 AT THE END OF THE MONTH FOLLOWING THE MONTH IN WHICH THE SUPPORT PAYMENT IS
39 DUE. PAST SUPPORT REDUCED TO A FINAL WRITTEN MONEY JUDGMENT ACCRUES INTEREST
40 AT THE ANNUAL RATE OF TEN PER CENT BEGINNING ON ENTRY OF THE JUDGMENT BY THE
41 COURT.

42 F. ANY DIRECT PAYMENTS NOT PAID THROUGH THE CLEARINGHOUSE OR ANY
43 EQUITABLE CREDITS OF PRINCIPAL OR INTEREST PERMITTED BY LAW AND ALLOWED BY
44 THE COURT AFTER A HEARING SHALL BE APPLIED TO SUPPORT ARREARAGES AS DIRECTED
45 IN THE COURT ORDER. THE COURT SHALL MAKE SPECIFIC FINDINGS IN SUPPORT OF ANY

1 PAYMENTS OR CREDITS ALLOWED. IF THE COURT ORDER DOES NOT EXPRESSLY STATE THE
2 DATES THE PAYMENTS OR CREDITS ARE TO BE APPLIED, THE PAYMENTS OR CREDITS
3 SHALL BE APPLIED ON THE DATE OF THE ENTRY OF THE ORDER THAT ALLOWS THE
4 PAYMENTS OR CREDITS. IN A TITLE IV-D CASE, IF A COURT ORDER DOES NOT
5 INDICATE ON ITS FACE THAT THE STATE WAS EITHER REPRESENTED AT OR HAD NOTICE
6 OF THE HEARING OR PROCEEDING WHERE THE PAYMENTS OR CREDITS WERE DETERMINED,
7 THE COURT ORDER SHALL NOT REDUCE ANY SUM OWED TO THE DEPARTMENT OR ITS AGENT
8 WITHOUT WRITTEN APPROVAL OF THE DEPARTMENT OR ITS AGENT.

9 G. ANY WRITTEN AGREEMENT FOR CREDIT AGAINST SUPPORT ARREARAGES, OTHER
10 THAN BY COURT ORDER, SHALL BE MADE ONLY BY WRITTEN AFFIDAVIT OF DIRECT
11 PAYMENT SIGNED BY THE PERSON ORDERED TO MAKE THE SUPPORT PAYMENT AND THE
12 PERSON ENTITLED TO RECEIVE THE SUPPORT. THE AFFIDAVIT OF DIRECT PAYMENT
13 SHALL BE FILED DIRECTLY WITH THE CLEARINGHOUSE OR THE CLERK OF THE COURT, WHO
14 SHALL IMMEDIATELY TRANSMIT THE INFORMATION IN THE AFFIDAVIT TO THE
15 CLEARINGHOUSE. ANY CREDITS AGAINST SUPPORT ARREARAGES SHALL BE APPLIED AS OF
16 THE DATES AGREED TO BY THE PARTIES OR THE DATE OF AGREEMENT REFLECTED IN THE
17 AFFIDAVIT IF NO OTHER DATE IS AGREED TO IN THE AFFIDAVIT. IN A TITLE IV-D
18 CASE, THE AGREEMENT AND AFFIDAVIT SHALL NOT REDUCE ANY SUM OWED TO THE
19 DEPARTMENT OR ITS AGENT WITHOUT WRITTEN APPROVAL OF THE DEPARTMENT OR ITS
20 AGENT.

21 H. AN ARREARAGE CALCULATOR MAY BE DEVELOPED BY A GOVERNMENT AGENCY
22 USING AN AUTOMATED TRANSFER OF DATA FROM THE CLEARINGHOUSE AND THE CHILD
23 SUPPORT REGISTRY. THE ARREARAGE FIGURE PRODUCED BY THIS CALCULATOR IS
24 PRESUMED TO BE THE CORRECT AMOUNT OF THE ARREARAGE.